TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, [redacted] 1917

No. [redacted] 339

ADDISON P. SMITH, APPELLANT,

vs.

INTERSTATE COMMERCE COMMISSION.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

FILED [redacted]

(26,943)

(25,643)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1916.

No. 813.

ADDISON R. SMITH, APPELLANT,

vs.

INTERSTATE COMMERCE COMMISSION.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., JANUARY 12, 1917.

a Supreme Court of the District of Columbia.

In Equity. No. 34352.

INTERSTATE COMMERCE COMMISSION, Petitioner,
vs.
ADDISON R. SMITH, Respondent.

UNITED STATES OF AMERICA,
District of Columbia, ss:

Be it Remembered, That in the Supreme Court of the District of Columbia, at the City of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had, in the above-entitled cause, to wit:

1 *Petition.*

Filed May 19, 1916.

In the Supreme Court of the District of Columbia.

No. 34352. Equity.

INTERSTATE COMMERCE COMMISSION, Petitioner,
vs.
ADDISON R. SMITH, Respondent.

To the Honorable the Judges of the Supreme Court of the District of Columbia:

The Interstate Commerce Commission, the above-named petitioner, brings this its petition against Addison R. Smith, of Louisville, Kentucky, the above-named respondent, and says:

That your petitioner is an administrative tribunal organized and existing under and by virtue of an Act of Congress entitled "An Act to Regulate Commerce" approved February 4, 1887, as amended;

That the said Addison R. Smith is Third Vice President of the Louisville & Nashville Railroad Company, and has been connected with the said Louisville & Nashville Railroad Company since 1905;

That the said Louisville & Nashville Railroad Company is a corporation organized and existing under the laws of the State of Kentucky, and operates as a common carrier and engages in interstate commerce;

That by section 1 of said Act it is provided that all charges for the transportation of passengers and property shall be just and reasonable;

That by section 15 of said Act the Commission is authorized and empowered to determine and prescribe what shall be the maximum

just and reasonable rates or charges to be observed by inter-
2 state carriers, and what regulations or practices are just, fair and reasonable and to prescribe the same;

That by section 12 of said Act the Commission is given authority to inquire into the management of the business of common carriers, and keep itself informed as to the manner and method in which the same is conducted, and has the right to obtain from such carriers full and complete information to enable the Commission to perform its duties;

That by section 13 of said Act the Commission may at any time institute an inquiry on its own motion in any case and as to any matter or thing concerning which a complaint is authorized to be made, or concerning which any question may arise under any of the provisions of this Act, or relating to the enforcement of any of the provisions of this Act;

That by section 20 of said Act the Commission is authorized to require from said carriers detailed accounts of all their expenditures and revenues, and a complete exhibit of their financial operations, and further the Commission is authorized to prescribe the forms of any and all accounts, records and memoranda to be kept by the carriers;

That in pursuance of the authority given it by the Act to Regulate Commerce, the Inter-state Commerce Commission has prescribed and published forms for any and all accounts to be kept by carriers subject to the provisions of the Act to regulate commerce;

That by section 21 of said Act the Commission is required to make a report to congress each year, containing information and data collected by the Commission as may be considered of value
3 in determining questions connected with the regulation of interstate commerce;

That by section 12 of said Act the Commission is empowered to require by subpœna the attendance and testimony of witnesses, and the Commission may invoke the aid of any court of the United States in requiring the attendance and testimony of witnesses;

That a resolution of the United States Senate adopted November 6, 1913, directed the Interstate Commerce Commission to investigate, take proof, and report to the Senate as soon as practicable upon certain practices and financial relations of the Louisville & Nashville Railroad Company, Nashville, Chattanooga & St. Louis Railway and other carriers, which resolution is set out in the order of the Commission of date November 10, 1913, hereinafter described;

That thereafter the Commission instituted a proceeding of inquiry and investigation and in that action made and duly served upon the Louisville & Nashville Railroad, the Nashville, Chattanooga & St. Louis Railway and other carriers, the order of November 10, 1913, and certain supplemental orders which are attached hereto as Appendix A of this petition;

That on December 9, 1915, a petition before the Interstate Commerce Commission was filed by Luke Lea, Esq., alleging that the Louisville & Nashville Railroad Company, and the Nashville, Chattanooga & St. Louis Railway had by the issuance of free transporta-

tion to certain passengers unreasonably discriminated against interstate commerce, that the free passes given certain persons and denied others constituted an undue preference to those persons given free passes, and that free intrastate transportation given certain
4 persons who were shippers constituted a purchase of traffic from such pass users, in violation of the Act to Regulate Commerce, and prayer was made that the Commission should make an order requiring the carriers named to cease and desist from giving such free transportation;

That by the Commission's order of date March 20, 1916, the petition of Luke Lea, Esq., was consolidated for hearing with the proceeding instituted in response to the Senate Resolution, a copy of said order being attached to this petition as a part of Appendix A.

That thereafter, to wit, on the 27th day of April, in the year 1916, the said Commission, pursuant to said orders, held a hearing presided over by Commissioner B. H. Meyer, within the jurisdiction of this court, for the purpose of examining and inquiring into the matters and things above set forth.

That at said hearing in response to a subpœna served upon him, Addison R. Smith, above respondent, appeared;

That after being duly sworn he stated that he was the Third Vice President of the Louisville & Nashville Railroad Company, whereupon the said Addison R. Smith was asked certain questions which he was directed by the presiding Commissioner to answer, but upon advice of counsel he refused to answer said questions or any of them;

That the said questions the witness refused to answer together with the reasons advanced and other pertinent and explanatory matters are as follows:

A. R. SMITH was called as a witness, and having been duly sworn, testified as follows:

5 Direct examination:

Mr. Folk: What is your full name?

Mr. Smith: Addison R. Smith.

Mr. Folk: What is your occupation?

Mr. Smith: Third President, Louisville & Nashville Railroad Company.

Mr. Folk: Where do you live?

Mr. Smith: Louisville.

Mr. Folk: Did you ever hear of the Alabama State Land Congress?

Mr. Smith: Yes, I think I have.

Mr. Folk: What was the purpose of the Alabama State Land Congress, do you know?

Mr. Smith: My recollection of a talk with the President of that organization was that he expected to instil in the agricultural interests of Alabama, a better idea of farming.

Mr. Folk: It was ostensibly for the purpose of aiding the agricultural resources of Alabama.

Mr. Jouett: We object to that "ostensibly." You can ask the witness what the purpose was, if he knows, but this is his witness, and he cannot ask him if it was ostensibly for a certain purpose.

Mr. Folk: I can ask the question.

Mr. Jouett: And I object to it. It is an improper question, and draws an improper inference.

Mr. Folk: I submit that the questions these gentlemen have been asking for some time would not warrant making such an objection to this innocent little question.

Mr. Jouett: We were just trying to follow you a little bit on yesterday's question, and that does not make this right.

6 Mr. Smith: My understanding was that it was for the promotion of farming interests.

Mr. Folk: I show you a letter addressed to Mr. G. A. Park, General Immigration and Industrial Agent, signed by yourself, dated March 1st, 1913, and will ask whether or not you can identify that as a copy of an original letter written by yourself.

Mr. Jouett: Governor Folk, he says that he identified it—did you say you identified the letter?

Mr. Folk: Do you?

Mr. Smith: I do.

Mr. Jouett: If you offer that in evidence, we desire to object to it.

Mr. Folk: I will read it. (Reading:)

"MARCH 1, 1913.

"Mr. G. A. Park, General Immigration & Industrial Agent.

DEAR SIR: There has been organized the Alabama State Land Congress, for the purpose of advertising the agricultural resources of Alabama * * *.

"The organization is in its infancy, and while quite a number of prominent Alabamians have taken hold and, presumably will do their part in a material way towards an energetic advertising campaign, it now needs some money for initial purposes.

"At an interview, this morning, President N. F. Thompson had with our president and me, Mr. Smith agreed that the L. & N. Railroad should do its share, making a subscription not exceeding $1200.00 during the next three months. As first payment, please arrange to issue a voucher payable to "The Alabama State
7 Land Congress, N. F. Thompson, President, Birmingham, Ala." for $500.00. President Thompson will call on you for further amounts should they be needed. Charge Traffic Expenses, Item 83, distributed as between our Alabama lines, except the N. & D., and N. O. & M. Divisions.

"Yours truly,

____ ____,

Third Vice President."

"(Copy, not signed.)

Mr. Jouett: Do you offer that in evidence?

Mr. Folk: We do.

Mr. Jouett: We object to the introduction of that letter in evidence for the reasons heretofore stated, as it comes within the advertising, and we desire to explain to your Honor that we should have objected and requested the witness not to answer anything in regard to the letter, but he answered it before we could make that objection. It is not particularly material in itself, but I wish to make that statement so that your Honor can see we are following the same consistent position.

Chairman Meyer: I shall have to rule that the letter shall be admitted.

(The letter so offered and identified was received in evidence and thereupon marked "Commission's Exhibit No. 1, Witness Smith, received in evidence April 29th, 1916," and the same is attached hereto.)

Mr. Folk: I show you a letter addressed to you, signed by N. F. Thompson, President——

Mr. Jouett: Suppose you read the letters in your question.

Mr. Folk: I will read them all. (Reading:)

8 "DEAR SIR: * * * I note very marked increase in the 'development' matter in all the daily papers, and corresponding absence of political. This is precisely what I am trying to bring about. * * *

"Yours truly,

(Signed) N. F. THOMPSON,
President."

"April 23, 1913.

"Addison R. Smith, 3rd V. P., Louisville & Nashville R. R., Louisville, Ky.

"MY DEAR SIR: * * * I am greatly encouraged at the marked change that is being exhibited all over the State in favor of 'business' and 'development', and while Mr. Comer has been actively canvassing in those places which he has considered his strongholds, he has not yet aroused such interest as to lead him to formally declare himself a candidate, and if he should do so, I believe he will be gloriously 'licked'. * * *

"Sincerely yours,

(Signed) N. F. THOMPSON,
President."

Mr. Jouett: Now, as bearing upon both the political situation and the advertising situation, I object to that question, and advise the witness, who is the Third Vice President of the Louisville & Nashville Railroad Company, not to answer the question.

Chairman Meyer: The witness is instructed to answer.

Mr. Smith: Under advice of counsel, I decline to answer.

9 Mr. Folk (Reading):

"BIRMINGHAM, ALA., 3/22/13.

"Addison R. Smith, V. P., Louisville & Nashville R. R., Louisville, Ky.

"DEAR MR. SMITH: * * * Now to announce that every Railroad, I. E., the Five large Systems (L. & N., The Southern, Seaboard, I. C., and Frisco) were coming to Alabama to consult with the land owners, and go over with them plans for a general move for White Farmers here, would have the most far-reaching benefit in every way, and could not be turned to any political disadvantage whatever. It would be without question the best method of defeating Comer, but I will see that it is kept clear of politics, and the Railroads will be infinitely the gainers.

"It will be worth all you can do to help bring this about, so I request that you write a letter to the Presidents of the Roads named and plainly state to them what is desired, and I will do the rest. Just sit steady in the boat, and you will * S. B. Comer licked to a 'frazzle', and all this railroad agitation would come to a speedy end in Alabama.

Sincerely Yours,
(Signed) N. F. THOMPSON.
President."

"* Word evidently omitted."

Mr. Jouett: What is your question about that? Are you going to read them all first?

Mr. Folk: Yes.

Mr. Jouett: All right.

Mr. Folk (Reading):

"BIRMINGHAM, ALA., May 24, 1913.

"Mr. G. A. Parks, G. I. & I. Ag't, L. & N. R. R., Louisville, Ky.

"DEAR MR. PARKS: Can you obtain for the Alabama Land Congress an additional subscription of $300.00? * * *

"It is simply to meet a present emergency and the Louisville & Nashville will feel my influence in their favor before this political campaign closes. * * *

"Sincerely,
(Signed) N. F. THOMPSON.

R. R. to Mr. A. R. Smith:
Favorably recommended.
(Signed) G. A. P.
5/26.

R. R. to Mr. M. H. Smith, for instructions.
(S'g'd) A. R. S.
5/26.

A. R. S.: Do as you deem best.
(Sngned) M. H. S.
May 27, 1913.

"August 2, 1913.

"MR. PUSEY: * * * The movement represented by the Alabama State Land Congress will result in inestimable benefit to the Alabama carriers; it has other value at this time, which it is unnecessary to mention; suffice it to say that I believe the executive officers (Presidents or Vice Presidents) of the respective Alabama lines have information on the subject.

(Signed) A. R. S.

11 BIRMINGHAM, ALA., Nov. 7, 1913.

"Mr. M. H. Smith, President, L. & N. R. R., Louisville, Ky.

"MY DEAR SIR: * * * I shall make it more clear that Alabama cannot hope to advance as it should until the people stop the agitation against railroads by the politicians. * * *

"Yours truly,

(Signed) N. F. THOMPSON,
"Secretary and Gen'l Manager."

"May 29, 1913.

"Mr. W. W. Finley, President, Sou. R'y, A. G. S. R. R., M. & O. R. R., Washington, D. C.:
Mr. W. J. Harahan, President, S. A. L. R'y, Norfolk, Va.:
Mr. C. H. Markham, President, I. C. R. R., C. of G. R'y, Chicago, Ill.:
Mr. B. L. Winchell, President, Frisco Lines, St. Louis, Mo.:
Mr. C. A. Wickersham, President, A. & W. P. R. R., W. R'y of Ala., Atlanta, Ga.:
Mr. T. M. Emerson, President, A. C. L. R. R., Wilmington, N. C.:

"GENTLEMEN: * * * I have felt that the movement, aside from the good resulting from the direct accomplishment of its purposes would, due to the cementing of the interests and the
12 effort of all classes of citizens, cause a more friendly feeling towards corporations in general, and railroads in particular, and in addition might be the means of diverting the minds of farmers and others from demagogic politics, although it has been the effort of the officers of the Congress to keep their organization clear of politics. Hence, I have been aiding the President, Col. N. F. Thompson, in various ways in furthering the objects of the Congress.
"* * *

"I hope that you can find it proper to say to President Thompson that you will arrange to attend the next Congress.

Yours very truly,

(Signed) M. H. SMITH,
President.

All of the letters I have read you, except the last one, were either signed by you or addressed to you, and the last one is signed by M. H. Smith, President, but is in your files.

I ask you with respect to all but the last, whether or not you can

identify the copies as I have read them, as copies in part of letters either written to you or written by you, and as to the last letter, I will ask you if you did not cause this letter, which was signed by President Smith, to be written and for his signature.

Mr. Jouett: For the reasons heretofore stated, we object to that question and advise the witness not to answer.

Chairman Meyer: The witness is instructed to answer.

Mr. Smith: And by advice of counsel I decline to answer.

Mr. Folk: Now, Mr. Smith, here is an organization calling
13 itself the Alabama State Land Congress, ostensibly formed to aid farmers. I ask you if, in reality, that organization did not represent the Louisville & Nashville Railroad Company, and if it was not formed for the purpose of creating public sentiment in favor of the Louisville & Nashville Railroad?

Mr. Jouett: We object to that question and advise the witness not to answer.

Chairman Meyer: The witness is instructed to answer.

Mr. Smith: Under advice of counsel, I decline to answer.

Mr. Folk: Can you tell me how many thousands of dollars of the Louisville & Nashville Railroad Company's funds were expended through the Alabama State Land Congress in this effort to create sentiment in Alabama in favor of the Louisville & Nashville Railroad?

Mr. Jouett: I do not know that any thousands of dollars were spent, but for the reasons heretofore stated, we object to the question and advise the witness not to answer.

Chairman Meyer: The same ruling.

Mr. Smith: Under advice of counsel, I decline to answer.

Mr. Folk: So this Land Congress, supposed to be composed of farmers in Alabama, really had behind it the great Louisville & Nashville Railroad Company, and was, in reality, formed to favor corporate interests, was it not?

Mr. Jouett: We make the same objection and give the same advice to the witness.

Chairman Meyer: The same ruling.

Mr. Smith: On advice of counsel, I decline to answer.

Mr. Folk: Do you think it is fair to either the people of a great state like Alabama, in that way to deceive them into thinking that
14 an organization represents merely the farmers of the State, when in truth it represents a great railroad like the Louisville & Nashville Railroad?

Mr. Jouett: I object to the interferences and argument of counsel in framing the question, and also I object to the question on the other grounds and advise the witness not to answer.

Chairman Meyer: The witness is instructed to answer.

Mr. Smith: On advice of counsel I decline to answer.

Mr. Folk: Have you any knowledge of a fund of $37,500, made up of Louisville & Nashville Company money, expended in Alabama in what is known as an effort to get rid of certain questions in relation to taxation?

Mr. Jouett: We object to that question and instruct the witness to

decline to answer it. Could you give the date and make any reference to make it a little clearer?

Mr. Folk: Yes; I will give you the date in a moment and will give you full reference to the voucher.

Mr. Stone: The same advice.

Chairman Meyer: The witness is instructed to answer.

Mr. Smith: On advice of counsel, I decline to answer.

Mr. Folk: I will ask you, Mr. Smith, whether you know of your own knowledge of large amounts of money of the Louisville & Nashville Railroad b-ing used for political campaign purposes in the State of Alabama?

Mr. Jouett: We make the same objection, and advise the witness not to answer.

Chairman Meyer: The same ruling.

Mr. Smith: On advice of counsel, I decline to answer.

Mr. Folk: I ask you, Mr. Smith, whether or not you have personal knowledge of funds of the Louisville & Nashville Railroad used for political campaign purposes in the State of Tennessee and
15 charged on the books of the carrier to operating expenses or to construction account?

Mr. Jouett: We make the same objection and advise the witness not to answer.

Chairman Meyer: The witness is instructed to answer.

Mr. Smith: On advice of counsel I decline to answer.

Mr. Folk: I ask you if you know of your own knowledge of funds of the Louisville & Nashville Railroad used for campaign purposes in the State of Kentucky and charged on the books of the carrier to construction account or to operating expenses?

Mr. Jouett: We make the same objection and advise the witness not to answer.

Chairman Meyer: The witness is instructed to answer.

Mr. Smith: On advice of counsel, I decline to answer.

That in pursuance of its duty under the law, it was incumbent upon your petitioner to enable it to perform the functions for which it was created to procure the information sought by the questions put to the said witness, Addison R. Smith, and which he refused to answer;

That your petitioner is of the opinion that the said questions and each of them are relevant and material to the matter under investigation, and that an answer to each of said questions is necessary in order to enable your petitioner to discharge its duty, and execute and enforce the provisions of said Act to regulate commerce, and to inform your petitioner as to the manner and method in which the business of the said common carrier is conducted, and to enable your petitioner to obtain full and complete information necessary
16 to enable your petitioner to perform the duties and carry out the objects for which it was created;

Wherefore, your petitioner prays that an order or orders be made requiring the attendance before your petitioner of said witness at a time and place to be fixed by said Commission, and the making by

him of a full answer to each of the questions respectively declined to be answered by him aforesaid, and to any and all other pertinent questions relating to the subject matter aforesaid which said Commission may require him to answer, and for such other and further relief as may be just and proper in the premises.

INTERSTATE COMMERCE COMMISSION,
By JOS. W. FOLK, *Counsel.*

CITY OF WASHINGTON,
District of Columbia, ss:

I, B. H. Meyer, on oath depose and say, that I am a member of the Interstate Commerce Commission and made this affidavit on behalf of said Commission; That I have read the foregoing petition and know the contents thereof, and that the same is true.

B. H. MEYER.

Subscribed and sworn to before me, notary public within and for the District of Columbia, this 19th day of May, A. D. 1916.

GEO. F. GRAHAM,
Notary Public.

17 APPENDIX A.

Order.

At a General Session of the Interstate Commerce Commission, Held at Its Office in Washington, D. C., on the 10th Day of November, A. D. 1913.

Edgar E. Clark, Judson C. Clements, Charles A. Prouty, James S. Harlan, Charles C. McChord, Balthasar H. Meyer, John H. Marble, Commissioners.

No. 6319.

IN RE FINANCIAL RELATIONS, RATES AND PRACTICES OF THE LOUISville & Nashville Railroad Company, Nashville, Chattanooga & St. Louis Railway and Other Carriers.

The United States Senate having, by Resolution No. 153, adopted November 6, 1913, directed the Interstate Commerce Commission to investigate, take proof and report to the Senate as soon as practicable—

First. What amount of stock, bonds, and other securities of the Nashville, Chattanooga & St. Louis Railway is owned or controlled by the Louisville & Nashville Railroad;

Second. What other railroad or railroads in the territory served by the Louisville & Nashville Railroad and the Nashville, Chattanooga & St. Louis Railway have been purchased, leased, controlled, or arrangements entered into with, for the purpose of controlling

by either the Louisville & Nashville Railroad or the Nashville, Chattanooga & St. Louis Railway;

Third. Whether the Louisville & Nashville Railroad and the Nashville, Chattanooga & St. Louis Railway serve the same territory in whole or in part, and whether, under separate ownership, they
18 would be competitive to the various points in their territories;

Fourth. Any other fact or facts showing or tending to show the further relations between the Louisville & Nashville Railroad and the Nashville, Chattanooga & St. Louis Railway, and any fact or facts showing or tending to show whether these relations restrict competition and maintain fixed rates;

Fifth. The terms of the lease of the Nashville & Decatur Railroad by the Louisville & Nashville Railroad, and what amount, if any, of stock, bonds, and other securities of the Nashville & Decatur Railroad and of the Lewisburg & Northern Railroad are owned by the Louisville & Nashville Railroad or any of its subsidiaries or holding companies;

Sixth. Whether the Nashville & Decatur Railroad, the Lewisburg & Northern Railroad, and the Louisville & Nashville Railroad serve the same territory in whole or in part, and whether, under separate ownership, these railroads would be competitive between various points in their territories;

Seventh. Any other fact or facts showing or tending to show the further relations between the Louisville & Nashville Railroad, the Nashville & Decatur Railroad, and the Lewisburg & Northern Railroad, and any fact or facts showing or tending to show whether these relations restrict competition and maintain and fix rates;

Eighth. Any fact or facts showing or tending to show (*a*) the relations between the Louisville & Nashville Railroad, the Nashville, Chattanooga & St. Louis Railway, the Tennessee Midland Railroad, the Tennessee, Paducah & Alabama Railroad, and any other railroads that have been purchased or leased by either or both of said railroad companies, and whether such relations restrict com-
19 petition and maintain and fix rates; and (*b*) whether the lease of the Western & Atlantic Railroad by the Nashville, Chattanooga & St. Louis Railway from the State of Georgia, and the arrangement made between the Louisville & Nashville and the Nashville, Chattanooga & St. Louis Railway, by which the former uses the tracks of the said Western & Atlantic Railway, restrict competition, restrain trade, and determine and fix rates;

Ninth. Any fact or facts showing or tending to show whether the ownership of the Louisville & Nashville Railroad and the Nashville, Chattanooga & St. Louis Railway of any railroad terminals or terminal companies, steamboats and steamboat lines upon the Cumberland and Tennessee Rivers, and any dock or dock yards at Pensacola, New Orleans, Mobile, or other seaport establishes a monopoly and restricts competition and determines and fixes rates;

Tenth. Any fact or facts showing or tending to show whether an agreement or arrangement has been entered into between the Louisville & Nashville and other railroad companies for the purpose of

preventing competition from entering into any of the territory served by the Louisville & Nashville Railroad, in consideration of the Louisville & Nashville Railroad agreeing not to enter into certain other territory, or in consideration of any other agreement or arrangement;

Eleventh. What amount of stock, if any, the Atlantic Coast Line Company, or Atlantic Coast Holding Company owns in the Louisville & Nashville Railroad, and in the Atlantic Coast Line, and whether the ownership by such holding company of a majority of stock in both of the aforesaid railroads tends to restrict competition and maintain and fix rates;

20 Twelfth. What amount, if any, the Louisville & Nashville Railroad, the Nashville, Chattanooga & St. Louis Railway, the Nashville & Decatur Railroad, and the Lewisburg & Northern Railroad, all or any of them, have subscribed, expended, or contributed for the purpose of preventing other railroads from entering any of the territory served by any of these railroads for maintaining political or legislative agents, for contributing to political campaigns, for creating sentiment in favor of any of the plans of any of said railroads; and

Thirteenth. (*a*) The number of free annual passes; (*b*) the number of free-trip passes; (*c*) the number of every kind of free passes issued by each of said railroads each year since January 1, 1911, to members of legislative bodies and other public officials or at the request of members of legislative bodies and other public officials; (*d*) the total mileage traveled upon free passes issued under each of the above classifications; and (*e*) the amount in money the free passes issued under each of the above-mentioned classifications would equal at the regular rates for such service of each of the above-named railroads:

It is ordered, That a proceeding of inquiry and investigation be, and the same is hereby, instituted into and concerning the several matters and things set forth and referred to in the said resolution.

It is further ordered, That this proceeding be set for hearing at such times and places, and that such persons be required to appear and testify or to produce books, documents and papers, as the Commission may hereafter direct; and that the investigation be carried on in the meantime by such other means and methods as may be deemed appropriate.

21 And it is further ordered, That a copy of this order be served upon each of the following-named railroad companies, and upon any other companies which may hereafter be designated by the Commission:

Nashville, Chattanooga & St. Louis Railway;
Louisville & Nashville Railroad Company;
Nashville & Decatur Railroad Company;
Lewisburg & Northern Railroad;
Tennessee Midland Railroad Company;
Tennessee, Paducah & Alabama Railroad;
Western & Atlantic Railroad; and

Atlantic Coast Line Railroad Company.

By the Commission:

[SEAL.] (Signed) GEORGE B. McGINTY,
Secretary.

Order.

At a General Session of the Interstate Commerce Commission, Held at Its Office in Washington, D. C., on the 20th Day of March, A. D., 1916.

No. 6319.

IN RE FINANCIAL RELATIONS, RATES AND PRACTICES OF THE LOUISVILLE & NASHVILLE RAILROAD COMPANY, NASHVILLE, CHATTANOOGA & ST. LOUIS RAILWAY AND OTHER CARRIERS.

Order of Amendment and Consolidation.

Upon consideration of an order dated November 10, 1913, in the above-entitled proceeding, and for good cause shown:

It is ordered, That said order of November 10, 1913, be, and it is hereby, amended by adding after the last paragraph thereof the following:

22 It is further ordered, That, after the hearings and the investigations authorized by this proceeding, the Commission may issue such order or orders in the matter as may be proper and necessary in the premises.

It is further ordered, That the case before the Commission entitled Docket No. 8488, Luke Lea v. Louisville & Nashville Railroad Company et al., be, and it is hereby, consolidated for hearing with this proceeding, upon one record, at such times and places as the Commission may hereafter direct, that a copy of this order be filed in the record of said Docket No. 8488, and that the parties thereto have due notice of all subsequent proceedings herein.

And it is further ordered, That copies of the original order herein and of this order be served upon all the parties to this proceeding and upon the parties to Docket No. 8488.

By the Commission:

[SEAL.] (Signed) GEORGE B. McGINTY,
Secretary.

Rule to Show Cause.

Filed May 19, 1916.

In the Supreme Court of the District of Columbia.

No. 34352.

INTERSTATE COMMERCE COMMISSION, Petitioner,
v.
ADDISON R. SMITH, Respondent.

In the Matter of the Request of the Interstate Commerce Commission for an Order Requiring the Above-Named Respondent, Addison R. Smith, to Answer Certain Questions Propounded by the Interstate Commerce Commission.

The Interstate Commerce Commission having duly filed
23 petition to the Judges of the Supreme Court of the District of Columbia for an order or orders requiring the above-named Respondent, Addison R. Smith, to appear before said Interstate Commerce Commission, at a time and place to be fixed by said Commission, and to make full answers to the questions theretofore refused to be answered by said Addison R. Smith as set forth in said petition, and to any and all pertinent questions relating to the subject matter set forth in said petition, which said Commission might require him to answer;

It is therefore ordered, That said Addison R. Smith, the above-named Respondent, be, and he is hereby required to appear before said Supreme Court of the District of Columbia, at a session of said Court to be held in Circuit Court Division No. 2, in the City of Washington, District of Columbia, on the 26th day of May 1916, at 10 o'clock in the forenoon in Circuit Court #2, and then and there to show cause why said petition should not be granted.

WENDELL P. STAFFORD,
Judge, Supreme Court of the District of Columbia.

Appearance of Respondent.

Filed May 19, 1916.

In the Supreme Court of the District of Columbia.

No. 34352.

INTERSTATE COMMERCE COMMISSION, Petitioner,
vs.
ADDISON R. SMITH, Respondent.

Now comes the Respondent, Addison R. Smith, through his counsel, and enters his appearance in the above-entitled
24 cause.

HENRY L. STONE,
HELM BRUCE,
EDWARD S. JOUETT,
Counsel for Respondent.

Answer of Respondent.

Filed July 7, 1916.

In the Supreme Court of the District of Columbia.

#34352. Eq.

INTERSTATE COMMERCE COMMISSION, Petitioner,
vs.
ADDISON R. SMITH, Respondent.

Respondent, Addison R. Smith, for answer to the petition herein, says:

He admits that the petitioner is an administrative tribunal, and says that it has no jurisdiction, rights, duties, or powers, except such as are given it by an act of congress, entitled "An Act to Regulate Commerce", approved February 4, 1887, and amendments thereto, and a few other special powers given it by special acts of Congress, which, however, do not pertain to anything involved in the present controversy. And respondent says that the power to investigate political questions, or questions as to whether or not common carriers have engaged in political activities, or in attempts to create sentiment in favor of their plans, are not among the powers given to the Interstate Commerce Commission. The powers of that Commission, which is a purely ministerial tribunal, having only the powers given it by act of Congress are, with the few exceptions above stated, confined to the enforcement of the Act to Regulate

Commerce, and the amendments thereto; and that act, as
25 amended, does not attempt to regulate the politics or political activities of common carriers, nor the subject of their endeavoring to exclude competitors from their territories.

But respondent says that the sole object of a large part of the questions propounded to him by the counsel for the Interstate Commerce Commission, and which he declined to answer, was to delve into questions purely political, and to ascertain whether or not it had been the policy of the Louisville & Nashville Railroad Company to engage in political campaigns and to make contributions of funds to such campaigns; and as to whether or not said Louisville & Nashville Railroad Company had in the past in fact engaged in such political campaigns, or made contribution of funds to the same, and if so, to what extent, and when and where; all of which matters, as respondent is advised, are matters entirely outside the jurisdiction of the Interstate Commerce Commission, and concerning which it had no right to demand that this respondent should answer.

And respondent says that the proceeding before the Interstate Commerce Commission, in which he was interrogated, and out of which the present controversy arises, is a consolidation of two proceedings, principally against the Louisville & Nashville Railroad Company and the Nashville, Chattanooga & St. Louis Railway, before the Interstate Commerce Commission, to wit, Nos. 6319 and 8488 on the docket of that Commission; that Luke Lea is the open and sole complainant in the latter, and is the instigator and real complainant in the former of said two proceedings; that said former proceeding, to wit, No. 6319, was instituted by the Interstate Commerce Commission without there being a nominal complainant, but pursuant to a resolution of the United States Senate introduced by said Luke Lea, who then was, and now is, a member of
26 said Senate, and who is the open complainant in the other of said two proceedings, to wit, No. 8488, the complaint in which is confined solely to the alleged improper issue of free passes by the Louisville & Nashville Railroad Company and the Nashville, Chattanooga & St. Louis Railway.

Respondent says that at the time said resolution was introduced into the Senate, as aforesaid, which was in August, 1913, the said Luke Lea, who then was, and now is, the owner and operator of a newspaper in the city of Nashville, Tennessee, was engaged in a bitter attack upon the Louisville & Nashville Railroad Company through the columns of his said newspaper, due to the fact that the said Louisville & Nashville Railroad Company, or certain of its officials, had declined to do for him what he had requested, the result of which was that he began and continued attacking the Louisville & Nashville Railroad Company through the editorial column of his said newspaper; and in the midst of said attack introduced into the Senate of the United States the resolution aforesaid, in August, 1913, which he did not bring to a vote until in November, 1913, at a time when, as respondent is advised, only fourteen members of the Senate were present. Following the entry of the order of the Interstate Commerce Commission, pursuant to said Lea resolution, an

extensive examination of the accounts, records, and memoranda of the Louisville & Nashville Railroad Company and the Nashville, Chattanooga & St. Louis Railway was made by examiners of the Interstate Commerce Commission during the course of which they attempted to examine the correspondence of said Companies, which, however, the Supreme Court of the United States held they were not entitled to do (United States vs. Louisville & Nashville
27 Railroad Company, 236 U. S. 318). Pursuant to said resolution the Commission made two elaborate reports to the Senate, viz., on July 7, 1914, and February 16, 1915, covering the matters embraced in said resolution; but no attempt was ever made by the said Commission to have any hearing, or to examine any witnesses, pursuant to its order under the Lea resolution aforesaid, which order was made on November 10, 1913, until more than two years and four months thereafter, and not until after said Luke Lea had made a political race for reelection to the United States Senate for Tennessee in the year 1915, and had been defeated, after which, manifestly through his insistence, and presumably without any knowledge upon the part of the Interstate Commerce Commission of his ulterior motives, the said order of investigation, which had lain dormant for so long a period, was revived, and an attempt was made by means of the questions which respondent declined to answer, to inquire into the question of whether or not the Louisville & Nashville Railroad Company had been taking a part in politics, and especially in the State of Tennessee; the first question, specific as to time and place, asked of the president of the Louisville & Nashville Railroad Company on this subject of political contributions being as to whether or not respondent knew of any funds of the Louisville & Nashville Railroad Company "expended in the State of Tennessee for political campaign purposes during the year 1915"; Tennessee being the State and 1915 the year in which said Luke Lea made his unsuccessful political campaign for his party's nomination as a candidate for the United States Senate.

And respondent submits that the Interstate Commerce Commission has no lawful right, and no power, to command him to answer questions on the subject of political contributions,' or other
28 political activities; and to do so is a perversion of the purposes for which the Interstate Commerce Commission was created.

And so as to questions asked of respondent, and which he declined to answer, as to whether or not the Louisville & Nashville Railroad Company attempted to create sentiment in favor of its plans. These are matters wholly outside of the jurisdiction of the Interstate Commerce Commission, and over which it is given no power of investigation or regulation.

Respondent avers and submits that he was, and is, justified in refusing to answer the questions and each of them set forth in the petition, which he did refuse to answer; and that the petitioner, the Interstate Commerce Commission, was, and is, without lawful power or jurisdiction to investigate or regulate the subjects concerning

which said questions were asked, and was, and is, without lawful power or jurisdiction to call upon or require him to answer said questions, or any of them.

As to the allegations of the petition concerning the meaning and effect and requirements of the Act to Regulate Commerce, as amended, respondent refers to said Act and its amendments to speak for themselves, but denies the legal effect attributed thereto by the petitioner, as well as other legal conclusions stated in the petition. And respondent denies that, pursuant to its duty under the law, it was encumbent upon petitioner, to enable it to perform the functions for which it was created, to procure the information sought by the questions put to respondent, and which he refused to answer.

29 Wherefore, having fully answered, respondent prays to be hence dismissed with his costs.

HENRY L. STONE,
HELM BRUCE,
EDWARD S. JOUETT,
Counsel for Respondent.

STATE OF KENTUCKY,
County of Jefferson:

Respondent, Addison R. Smith, says that the statements of the foregoing answer are true, as he verily believes.

A. R. SMITH.

Subscribed and sworn to before me by Addison R. Smith this 5th day of July 1916.

[SEAL.] G. W. B. OLMSTEAD,
Notary Public, Jefferson County, Ky.

My Commission expires January 23, 1918.

Motion to Strike Out Certain Portions of Respondent's Answer.

Filed August 9, 1916.

In the Supreme Court of the District of Columbia.

No. 34352.

INTERSTATE COMMERCE COMMISSION, Petitioner,
v.
ADDISON R. SMITH, Respondent.

Now comes the petitioner, the Interstate Commerce Commission, and moves to strike out of the respondent's answer filed herein the following portions, to wit:

Beginning at the first paragraph, line 2, page 2, and extending to the second paragraph, line 18, page 4.

30 The petitioner states that:

1. The said portions of the answer are irrelevant, immaterial, and not responsive to the averments of the petition.

2. The motives of the United States Senate in adopting the resolution and the motives of the Interstate Commerce Commission in making the order providing for this inquiry can not be the subject of a judicial inquiry.

3. The jurisdiction of the Interstate Commerce Commission and its power to enforce the performance of the legal duty of the carrier to inform the Commission as to the expenditure of its funds is a matter of law and not of fact.

4. The Interstate Commerce Commission has jurisdiction, as a matter of law, to be informed as to all expenditures of an interstate carrier, and this jurisdiction is not defeated because the particular expenditure may be for political purposes, to suppress competition, or to influence public sentiment.

Wherefore the petitioner prays that the said portions of the answer as herein described be stricken out.

JOS. W. FOLK,
Counsel for the Interstate Commerce Commission.

Decree Directing Respondent to Answer Certain Questions.

Filed October 11, 1916.

In the Supreme Court of the District of Columbia.

No. 34352.

INTERSTATE COMMERCE COMMISSION, Petitioner,
v.
ADDISON R. SMITH, Respondent.

The Interstate Commerce Commission, having filed its
31 petition to the Judges of the Supreme Court of the District of Columbia, praying for an order requiring the above-named respondent, Addison R. Smith, to appear before said Commission at a time and place to be fixed by said Commission and to make full answers to certain questions heretofore refused to have been answered by said Addison R. Smith as set forth in said petition, and to any and all other pertinent questions relating to the subject-matter aforesaid which said Commission might require him to answer:

And an order having been duly made by the Honorable Wendell P. Stafford, Judge of said court, requiring said respondent to appear before the Supreme Court of the District of Columbia, and then and there to show cause why said petition should not be granted; and the said Addison R. Smith, having duly made answer to said petition and having on August 16, 1916, appeared by counsel before said Supreme Court of the District of Columbia; and the questions involved in said petition and answer having been duly argued by counsel for respective parties, and the court having been fully advised in the premises;

Now after reading and considering said petition, the answer

thereto, and hearing argument of counsel for Petitioner and for Respondent:

It is ordered, adjudged, and decreed, that the said respondent, Addison R. Smith, be, and he is hereby, directed to appear before the Interstate Commerce Commission, upon due notice by said Commission, at a time and place to be designated by it, and make full, true and complete answers and responses to the following questions heretofore propounded and refused to be answered by said respondent:

32 Mr. Folk: I ask you, Mr. Smith, whether or not you have personal knowledge of funds of the Louisville & Nashville Railroad used for political campaign purposes in the State of Tennessee and charged on the books of the carrier to operating expenses or to construction account?

Mr. Folk: I ask you if you know of your own knowledge of funds of the Louisville & Nashville Railroad used for campaign purposes in the State of Kentucky and charged on the books of the carrier to construction account or to operating expenses?

WENDELL P. STAFFORD, *Justice.*

October 11th, 1916.

Petition for Appeal.

Filed December 4, 1916.

In the Supreme Court of the District of Columbia.

No. 34352. Eq.

INTERSTATE COMMERCE COMMISSION, Petitioner,
vs.
ADDISON R. SMITH, Respondent.

To the Honorable Wendell Phillips Stafford, District Judge:

The above named Addison R. Smith, feeling aggrieved by the decree entered and rendered in the above entitled cause on October 11, 1916, does hereby appeal from said decree to the Supreme Court of the United States for the reasons set forth in the assignment of errors filed herewith. And he prays that his appeal be allowed, citation be issued as provided by law, and that a transcript of the record, proceeding, and documents upon which said proceeding was based, duly authenticated, be sent to the Supreme Court of the United States, sitting at Washington, D. C. under the rules

33 of said court in such cases made and provided; and desiring to supersede the execution of such decree, said Addison R. Smith here appears to execute bond in such amount as the court may require for such purpose and prays that with the allowance of the appeal a supersedeas be issued.

H. L. STONE.
HELM BRUCE.
E. S. JOUETT.

The appeal is allowed and shall operate as a supersedeas upon the petitioner filing a bond in the sum of $500, with sufficient sureties to be conditioned as required by law.

WENDELL P. STAFFORD, *Justice.*

Order Allowing Appeal, Fixing Bond and for Transcript.

Filed December 4, 1916.

In the Supreme Court of the District of Columbia.

No. 34352. Eq.

INTERSTATE COMMERCE COMMISSION, Petitioner,
vs.
A. R. SMITH, Respondent.

This day came respondent, A. R. Smith, by counsel, and presented to the court his assignment of errors herein, a petition for appeal to the Supreme Court of the United States, and a supersedeas bond in the sum of Five Hundred ($500) Dollars with the Royal Indemnity Company as surety, and a stipulation of counsel as to the record to be copied on the appeal, and waiving the issue and service of citation; and it is now ordered that said several papers be, and they are hereby, filed; that said appeal be, and it is hereby,
34 allowed, and that said bond be, and it is hereby, approved.

WENDELL P. STAFFORD, *Justice.*

Bond on Appeal.

Filed December 4, 1916.

In the Supreme Court of the District of Columbia.

No. 34352.

INTERSTATE COMMERCE COMMISSION, Petitioner,
vs.
A. R. SMITH, Respondent.

Know all men by these presents: That we, A. R. Smith, as principal, and the Royal Indemnity Company, a corporation organized under the laws of the State of New York, as surety, are held and firmly bound in the sum of Five Hundred ($500) Dollars, to be paid to the Interstate Commerce Commission, to which payment well and truly to be made we bind ourselves, our heirs, executors, administrators, and successors, jointly and severally by these presents.

But this obligation is conditioned as follows:

Whereas lately at a term of the Supreme Court of the District of

Columbia in a suit pending in the Supreme Court between the Interstate Commerce Commission as petitioner and A. R. Smith as respondent, an order and decree was made against the said respondent who has obtained an order allowing an appeal to be taken to the Supreme Court of the United States to reverse the decree aforesaid:

Now, Therefore, the condition of the above obligation is such that if the said A. R. Smith shall prosecute his appeal to effect and shall answer all damages and costs if he fails to make his plea good, then the above obligation to be void, otherwise to remain in full force and effect.

[SEAL.] A. R. SMITH,
ROYAL INDEMNITY COMPANY,
By HENRY G. BEDINGER,
Att'y in Fact.

O. K.
F. E. C., *Ass't Cl'k.*

STATE OF KENTUCKY,
County of Jefferson:

I, G. W. B. Olmstead, Notary Public for Jefferson County, State of Kentucky, hereby certify that A. R. Smith and H. G. Bedinger, who are personally known to me to be the same persons whose names are subscribed to the foregoing instrument appeared before
35 me this day and acknowledged that they signed, sealed and delivered said instrument, the said Smith for himself and the said Bedinger for and on behalf of the Royal Indemnity Company as its attorney in fact, for the uses and purposes therein set forth.

Given under my hand and notarial seal this December 2nd, 1916. My commission expires January 23, 1918.

[SEAL.] G. W. B. OLMSTEAD,
Notary Public, Jefferson Co., Ky.

Stipulation.

Filed December 4, 1916.

In the Supreme Court of the District of Columbia.

No. 34352.

INTERSTATE COMMERCE COMMISSION, Petitioner,
vs.
A. R. SMITH, Defendant.

It is agreed between the parties hereto that in making up this record for the Supreme Court of the United States on the appeal by A. R. Smith, the clerk shall copy as the record the entire record herein except the transcript of evidence heard before the Commis-

sion which was filed as an exhibit with the petition. The parties agree that said exhibit may be omitted with the understanding that if either party deems the filing of such transcript to be important, it may be filed by such party as a supplemental record at any time before the hearing of the case.

Issue and service of citation on appeal are hereby waived.

A. R. SMITH,
By E. S. JOUETT,
Of Counsel.
JOS. W. FOLK,
Counsel for Interstate Commerce Commission.

36 *Assignment of Errors.*

Filed December 4, 1916.

In the Supreme Court of the District of Columbia.

No. 34352.

INTERSTATE COMMERCE COMMISSION, Petitioner,
versus
A. R. SMITH, Respondent.

Now comes the respondent, A. R. Smith, in the above entitled cause and files the assignment of errors hereinafter set forth, upon which he will rely in the prosecution of his appeal to the Supreme Court in the above entitled cause from the decree made and entered by this Honorable Court on October 11, 1916, to-wit:

1. The court erred in that, after holding in its opinion in the M. H. Smith case, which applies to this case, that the order of investigation ought to be sufficiently definite to show that it related to some matter concerning which a complaint might be made, or concerning which a question arises under some provision of the Act to Regulate Commerce, it assumed that the order of investigation related to a question which had arisen under some provision of the Act to Regulate Commerce, when, in fact, the order of investigation referred to no such question.

2. The court erred in assuming as a basis of its opinion that the Commission had before it in said investigation the accounts of expenditures for operating expense, or the question of rates.

3. The court erred in taking, as one of the bases of its opinion, the assumption that the order of investigation related to the method of keeping accounts, since the order of investigation was not
37 directed to that subject at all, and the assumption adopted by the court came merely from the form of a particular question propounded to the witness while on the stand.

4. The court erred in connection with the fifth question in the M. H. Smith case, relating to the voucher therein described, in adopting as the basis of its opinion the assumption, derived solely

from the questions and answers, that the investigation "presents a question arising under a provision of the Act, namely, the provision of section 20, which required the carrier in its annual report to state explicitly with regard to its operating and other expenses", when in fact no such question was suggested in the order of investigation.

5. The court erred in assuming as the basis of its opinion that "a question arising under the provisions of the Act" referred to in section 13 thereof and which the court held correctly must have actually arisen, can arise during a hearing by a mere interrogatory put to a witness without any reference in the order of investigation to the subject matter thereby suggested, whereas the Act meant that such a question, having previously arisen, must have been set out in the order of investigation as the subject of the investigation; the error of the court in this respect being illustrated by the following quotation from that part of its opinion, where it was discussing interrogatory No. 5, to M. H. Smith in his case, relating to a specific voucher:

"Does not this interrogatory present a question arising under a provision of the Act, viz., the provision in section 20 which requires the carrier in its annual report to state explicitly with regard to its 'operating and other expenses'? When the carrier is required by the Act to furnish just such information as this, when the examiners have been refused the information, and when it may be clearly seen that the information may be necessary to enable the
38 Commission to deal intelligently with the question of rates, and more especially when the account and voucher appear in a form that could not be approved by the Commission and could apparently be adopted only as a method of concealing the true character of the expenditure, how can it fairly be said that no question is presented arising under any provision of the Act."

6. In reaching its conclusion with reference to each of the other interrogatories set out in the petition the court committed the same fundamental error of assuming that the "question arising under the Act," which alone could give it jurisdiction, was a question—whether relating to rates or the proper keeping of accounts—which did not have to be set out in the order of investigation as the subject matter thereof, but could arise, and give jurisdiction, in the midst of a hearing out of a mere interrogatory to a witness which suggested a question or subject matter within the jurisdiction of the Commission.

7. The court erred in holding, in effect, that under the order of the Interstate Commerce Commission, involved in this case, respondent, as a witness, could lawfully be required to answer any question that might be propounded to him as to expenditures for political purposes, or to keep out competition, or as to how such expenditures were charged in its accounts, because such question might have a bearing upon the question of the reasonableness of the rates of the carriers involved, or the correctness of their accounts, when it did not appear that any question had arisen as to the reasonableness of such rates, or the correctness of such accounts, or that

the Commission had ordered, or was making any investigation of such matters.

8. The court erred in holding that the amendment of 1910 of the Act to Regulate Commerce empowered the Interstate
39 Commerce Commission, through its representative, in the proceedings involved and referred to in the petition herein, to require respondent, as a witness, to answer the questions propounded to him, because they involved the expenditures of the carrier's funds, and so affected the question of the reasonableness of its rates, and also involved its methods of accounting, when it does not appear that the Commission had ordered, or entered upon, any proceeding of inquiry or investigation, either as to the reasonableness of carrier's rates, or as to the correctness or propriety of its accounting.

9. The court having held that the amendment of 1910 of the Act to Regulate Commerce gives the Commission power to proceed by way of inquiry and examination of witnesses as to any matter or thing concerning which a question has arisen under any of the provisions of the Act, or relating to the enforcement thereof, erred in then holding that the respondent, as a witness in such proceeding, could be compelled to answer questions as to expenditures for political purposes, or to keep out competition, and as to how they were charged in the carrier's accounts, on the ground that such questions might have a bearing upon the reasonableness of the carrier's rates, or its methods of accounting, when it did not appear that any question had arisen as to the reasonableness of its rates or its methods of accounting.

10. The court erred in holding, in effect, that the matter under investigation by the Interstate Commerce Commission in the proceeding involved herein, is to be determined by the question, or questions, asked of a witness by the representative of the Commission conducting the examination, and not merely by the order of
40 the Commission instituting or directing the proceeding of inquiry and investigation.

11. The court erred in holding that the real object of the inquiry in the twelfth paragraph of the Commission's order, involved herein, was, not to discover political activities of the carrier, but to discover the amount and real nature of its expenditures.

12. The court erred in not dismissing the petitioner's petition, for the reason that the order of investigation failed upon its face to show that it related to any matter or thing concerning which a complaint was authorized to be made, or concerning which any question had arisen under any of the provisions of the Act to Regulate Commerce, or relating to the enforcement of any of the provisions of said Act.

13. The court erred in not dismissing the petition, for the reason that all the questions which the respondent, as a witness, refused to answer, were questions called for only under the twelfth paragraph of the Commission's order of investigation, and that the matters ordered to be investigated by that paragraph are not matters which the Commission is legally entitled to investigate.

14. The court erred in ordering and directing respondent, A. R. Smith, to appear before the Interstate Commerce Commission and to answer the questions which in, and by said order and decree, he is directed to answer.

15. As to each and every one of the questions which respondent is, by said order and decree, ordered and directed to answer, the court erred in directing him to answer the same, and to produce the evidence therein called for.

16. The court erred in ordering and directing respondent to answer the following question, to-wit:

"No. 1. I ask you, Mr. Smith, whether or not you have personal knowledge of funds of the Louisville & Nashville Railroad
41 used for political campaign purposes in the State of Tennessee and charged on the books of the carrier to operating expenses or to construction account?

17. The Court erred in ordering and directing respondent to answer the following question, to-wit:

"No. 2. I ask you if you know of your own knowledge of funds of the Louisville & Nashville Railroad used for campaign purposes in the State of Kentucky and charged on the books of the carrier to construction account or to operating expenses?"

Wherefore respondent prays that the judgment herein be reversed.

H. L. STONE,
HELM BRUCE,
EDWARD S. JOUETT,
Solicitors for Defendant.

Designation of Record.

Filed December 4, 1916.

In the Supreme Court of the District of Columbia.

No. 34352.

INTERSTATE COMMERCE COMMISSION, Petitioner,
vs.
A. R. SMITH, Respondent.

The clerk will please copy, and certify to the Supreme Court of the United States, as the record on appeal, the entire record in the lower court in the above styled cause, except the transcript of evidence of proceedings of investigation by the Interstate Commerce Commission, which transcript is made an exhibit with the petition in this proceeding; the parties, by stipulation, having agreed that said exhibit need not be copied as a part of the record.

H. L. STONE,
HELM BRUCE,
EDWARD S. JOUETT,
Counsel for Respondent.

42 Service of the foregoing præcipe is hereby acknowledged this Dec. 4, 1916.

JOS. W. FOLK,
Chief Counsel of Interstate Commerce Commission.

43 Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA,
District of Columbia, ss:

I, John R. Young, Clerk of the Supreme Court of the District of Columbia, hereby certify the foregoing pages numbered from 1 to 42, both inclusive, to be a true and correct transcript of the record, according to directions of counsel herein filed, copy of which is made part of this transcript, in cause No. 34352 in Equity, wherein Interstate Commerce Commission is Petitioner and Addison R. Smith is Respondent, as the same remains upon the files and of record in said Court.

In Testimony Whereof, I hereunto subscribe my name and affix the seal of said Court, at the City of Washington, in said District, this 11th day of December, 1916.

[Seal Supreme Court of the District of Columbia.]

JOHN R. YOUNG, *Clerk.*

Endorsed on cover: File No. 25,643. District of Columbia Supreme Court. Term No. 813. Addison R. Smith, appellant, vs. Interstate Commerce Commission. Filed December 11th, 1916. File No. 25,643.

Office Supreme Court, U. S.
FILED
SEP 22 1917
JAMES D. MAHER
CLERK

No. 339

SUPREME COURT OF THE UNITED STATES

ADDISON R. SMITH, - - - - - Appellant,

versus

INTERSTATE COMMERCE COMMISSION, Appellee.

BRIEF FOR APPELLANT.

EDWARD S. JOUETT,
HELM BRUCE,
Attorneys for Appellant.

HENRY L. STONE,
Of Counsel.

SEPTEMBER 10, 1917.

WESTERFIELD-BOWTE CO., INCORPORATED, LOUISVILLE, KY.

SUPREME COURT OF THE UNITED STATES

ADDISON R. SMITH, - - - - - - *Appellant,*

versus

INTERSTATE COMMERCE COMMISSION, - - *Appellee.*

BRIEF FOR APPELLANT.

This case is exactly similar to the case of Milton H. Smith v. Interstate Commerce Commission, with which it was heard. It is an appeal from a decree of the Supreme Court of the District of Columbia ordering Addison R. Smith to answer certain questions propounded to him in the course of an investigation by the Interstate Commerce Commission; the investigation being the same as that in which Milton H. Smith was called and directed to answer certain questions.

The questions asked of Addison R. Smith, and which the decree ordered him to answer, are as follows:

> "Mr. Folk: I ask you, Mr. Smith, whether or not you have personal knowledge of funds of the Louisville & Nashville Railroad used for political campaign purposes in the State of Ten-

nessee and charged on the books of the carrier to operating expenses or to construction account?

Mr. Folk: I ask you if you know of your own knowledge of funds of the Louisville & Nashville Railroad used for campaign purposes in the State of Kentucky and charged on the books of the carrier to construction account or to operating expenses?"

The conclusion which this court shall reach as to whether or not Milton H. Smith shall be required to answer the questions which he was ordered to answer in this investigation will necessarily lead the court to reach the same conclusion as to the questions propounded to Addison R. Smith.

We ask that the judgment requiring him to answer the questions contained in the decree be reversed.

EDWARD S. JOUETT,
HELM BRUCE,
Attorneys for Appellant.

HENRY L. STONE,
Of Counsel.

September 10,,1917.

Office Supreme Court, U. S.
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No. 339.

In the Supreme Court of the United States.

OCTOBER TERM, 1917.

ADDISON R. SMITH, APPELLANT,

v.

INTERSTATE COMMERCE COMMISSION, APPELLEE.

BRIEF FOR THE INTERSTATE COMMERCE COMMISSION.

JOS. W. FOLK,
Counsel for Interstate Commerce Commission.

WASHINGTON : GOVERNMENT PRINTING OFFICE : 1917

In the Supreme Court of the United States.

OCTOBER TERM, 1917.

ADDISON R. SMITH, APPELLANT,
v.
INTERSTATE COMMERCE COMMISSION, appellee.
No. 339.

BRIEF FOR THE INTERSTATE COMMERCE COMMISSION.

This appeal is from a decree of the Supreme Court of the District of Columbia directing the appellant to answer certain questions propounded by the Interstate Commerce Commission, hereinafter called the Commission, which appellant had refused to answer, at a hearing held by the Commission in an investigation of certain matters pertaining to the business of the Louisville & Nashville Railroad Company and other carriers. The questions which were asked the appellant, and which he refused to answer, related to expenditures of the funds of the carrier, and the case is exactly similar to the case of *Milton H. Smith* v. *Interstate Commerce Commission*, No. 337. The conclusion which this Court shall reach as to whether or not Milton H. Smith should be required to answer the questions which he was

ordered to answer will necessarily lead the Court to the same conclusion as to the questions propounded to appellant herein.

We ask that the decree requiring appellant to answer the questions be affirmed.

Respectfully submitted.

JOS. W. FOLK,

Counsel for Interstate Commerce Commission.

SMITH *v.* INTERSTATE COMMERCE COMMISSION.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

No. 339. Argued October 3, 1917.—Decided November 5, 1917.

Decided on the authority of *Smith* v. *Interstate Commerce Commission*, *ante*, 33.
Affirmed.

The case is stated in the opinion.

Mr. Edward S. Jouett, with whom *Mr. Helm Bruce* and *Mr. Henry L. Stone* were on the brief, for appellant.

Mr. Joseph W. Folk for the Interstate Commerce Commission, submitted.

MR. JUSTICE MCKENNA delivered the opinion of the court.

This case was heard with No. 337, just decided, *ante*, 33. Like the latter case it was based on a proceeding brought by the Interstate Commerce Commission in the Supreme Court of the District of Columbia to enforce answers to certain questions asked of appellant by the Commission and which he refused to answer upon the advice of counsel.

The petition and reply thereto are the same as in No. 337 and present for decision the same propositions.

The court entered an order requiring appellant to answer questions to the following effect:

1st. Whether he had personal knowledge of funds of the Louisville & Nashville Railroad used for political

campaign purposes in the State of Tennessee and charged on the books of the carrier to operating expenses or construction account; and, 2nd, whether he had personal knowledge of funds of the Louisville & Nashville Railroad used for campaign purposes in the State of Kentucky and charged on the books of the carrier to construction account or operating expenses.

It will be observed that the questions are limited, as some of the questions in No. 337 were, to the allocation upon the books of the company of the funds expended, if any. They are within the reasoning of the opinion in No. 337, and on the authority of that case the order is

Affirmed.